

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

Legislative Management Committee Policy H -- Legislative Procurement

(Last revised 2-4-20)

Part 1. General Provisions

Section H-101. Superseding prior policy.

This policy supersedes and replaces the Legislative Management Committee Policy on Legislative Procurement, adopted July 16, 2013.

Section H-102. Definitions.

(1) As used in this policy, the following terms mean the same as the terms are defined in Utah Code Section 63G-6a-103:

(a) "approved vendor list process;"

(b) "bidding process;"

(c) "contract;"

(d) "contractor;"

(e) "legislative procurement unit;"

(f) "procurement;"

(g) "procurement item;"

(h) "professional service;"

(i) "request for proposals;"

(j) "request for proposals process;"

(k) "responsible;"

(l) "responsive;"

(m) "small purchase process;"

(n) "solicitation;"

(o) "solicitation response;"

(p) "standard procurement process;"

(q) "state cooperative contract;"

(r) "tie bid;" and

(s) "vendor."

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(2) As used in this policy:

(a) "Annual cumulative threshold" means the same as that term is defined in Utah Code Section 63G-6a-506.

(b) "Information technology" means the same as that term is defined in Utah Code Section 63F-1-102.

(c) "Mixed procurement item" means:

(i) a procurement item that has features of both a standard procurement item and a professional service procurement item; or

(ii) a standard procurement item that:

(A) consists of information technology; and

(B) requires professional service to customize, modify, or otherwise be acted on to make it meet the legislative procurement unit's purposes for acquiring the standard procurement item.

(d) "New technology" means any invention, discovery, improvement, or innovation that was not available to the legislative procurement unit on the effective date of the contract, whether or not subject to protection under applicable copyright or patent laws, including:

(i) new or emerging processes, information technology, or machines;

(ii) improvements to or new applications of existing processes, information technology, or machines; and

(iii) any new applications of existing processes, information technology, or machines.

(e) "Procurement official" means:

(i) the individual or individuals designated in Section H-103 of this policy; or

(ii) to the extent of the duties and authority delegated under Subsection H-105(2), the employee or employees to whom duties and authority have been delegated under Subsection H-105(2).

(f) "Professional service procurement item" means a procurement item consisting of professional service.

(g) "Single procurement aggregate threshold" means the same as that term is defined in Utah Code Section 63G-6a-506.

(h) "Single solicitation response" means the only responsive solicitation response submitted by a responsible vendor in response to a solicitation.

(i) "Small purchase" means a procurement under Utah Code Section 63G-6a-506 and

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64 Part 5, Small Purchases.

65 (j) "Standard procurement item" means a procurement item other than professional
66 service.

67

68 **Section H-103. Designation of procurement officials of legislative procurement** 69 **units -- Protest officer.**

70 (1) The following are designated as the procurement official for the applicable
71 legislative procurement unit:

72 (a) for the Legislature, the president of the Senate and the speaker of the House of
73 Representatives;

74 (b) for the Senate, the president of the Senate;

75 (c) for the House of Representatives, the speaker of the House of Representatives;

76 (d) for the Office of the Legislative Fiscal Analyst, the legislative fiscal analyst;

77 (e) for the Office of the Legislative Auditor General, the legislative auditor general;

78 (f) for the Office of Legislative Research and General Counsel:

79 (i) for the procurement of legal services, legislative general counsel; and

80 (ii) for any other procurement, the director of the Office of Legislative Research
81 and General Counsel; and

82 (g) for any other legislative procurement unit that is a committee, subcommittee,
83 commission, or other organization, the chair or, if there is more than one chair, the chairs of
84 the committee, subcommittee, commission, or other organization.

85 (2) The protest officer of all legislative procurement units is an individual designated by
86 legislative general counsel.

87

88 **Section H-104. Legislative Management Committee approval required.**

89 A legislative procurement unit described in Subsection H-103(1)(g) may not issue a
90 solicitation for the acquisition of a procurement item or enter into a contract to acquire a
91 procurement item without the approval of the chairs of the Legislative Management
92 Committee.

93

94 **Section H-105. Legislative procurement unit acts through the procurement** 95 **official -- Delegation of authority.**

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(1) Except as otherwise explicitly provided in statute or this policy, for procurement purposes a legislative procurement unit acts through the procurement official of the legislative procurement unit.

(2)(a) A procurement official may in writing delegate some or all of the procurement official's duties and authority to one or more employees of the procurement unit, as the procurement official considers appropriate.

(b) A delegation under Subsection (2)(a) remains in effect until modified or revoked in writing.

Section H-106. Options for dealing with single solicitation response.

A legislative procurement unit that receives a single solicitation response in response to a solicitation may:

(1) award a contract to the vendor that submitted the single solicitation response if the procurement official determines that:

(a) the legislative procurement unit's actions relating to the issuance and notice of the solicitation complied with statute and this policy;

(b) the solicitation response meets the minimum requirements of the solicitation;

(c) other vendors had a fair opportunity to submit a solicitation response;

(d) the terms of the single solicitation response, including pricing, are fair and reasonable; and

(e) awarding the contract to the vendor that submitted the single solicitation response is in the best interest of the legislative procurement unit;

(2)(a) revise the solicitation as the procurement official considers appropriate, including to extend the deadline for submitting a solicitation response; and

(b) reissue and provide notice of the revised solicitation, allowing vendors, including the vendor that submitted the single solicitation response, to submit a solicitation response to the revised solicitation; or

(3) abandon the procurement.

Section H-107. Solicitation response from a person who is suspended, debarred, or ineligible.

A legislative procurement unit may not accept or evaluate a solicitation response from

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a person who is suspended, debarred, or otherwise ineligible to submit a solicitation response at the time that the solicitation response is due.

Section H-108. Claim of business confidentiality.

(1)(a) A person who submits a solicitation response that contains information that the person claims should be protected under Subsection 63G-2-305(1) or (2) shall:

(i) comply with the requirements of Section 63G-2-309; and

(ii)(A) submit a version of the solicitation response that is without redaction, marked "Contains Protected Confidential Business Information"; and

(B) submit a version of the solicitation response clearly marked as a "Redacted Version," with all information claimed to be protected under Subsection 63G-2-305(1) or (2) redacted.

(b) An evaluation committee may use the version of the solicitation response that is unredacted for evaluation purposes.

(c) The redacted version of the solicitation response is the version of the solicitation response that is for eventual public release.

(d) Both versions of a solicitation response submitted under this section are subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, and the Utah Legislature Policies and Procedures for Handling Records Requests.

(2) A legislative procurement unit may consider a solicitation response to be not responsive if the the vendor claims that all or substantially all of the material provisions of the solicitation response should be protected under Subsection 63G-2-305(1) or (2).

Section H-109. Exceptions to the terms and conditions in a solicitation.

(1) As used in this section, "exception request" means a request by a vendor for an exception or change to one or more of the terms or conditions of a solicitation.

(2) Subject to any exception or change granted under this section, by submitting a solicitation response a vendor:

(a) acknowledges that the terms and conditions, scope of work, and process described in the solicitation are fair, equitable, and not unduly restrictive; and

(b) certifies that the vendor understands and agrees to the terms and conditions, scope of work, and process described in the solicitation.

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(3)(a) A vendor seeking an exception or change to any of the terms or conditions contained in a solicitation shall include an exception request in the vendor's solicitation response.

(b) An exception request:

(i) shall clearly identify each term or condition as to which the vendor requests an exception or change;

(ii) shall clearly explain each requested exception or change; and

(iii) may not incorporate information by reference to a source external to the solicitation response.

(4) The procurement official may decline to negotiate an exception request or reject an exception request if the procurement official determines that:

(a) what is requested in the exception request is excessive;

(b) granting the exception request would result in a contract that is inconsistent with other similar contracts of the legislative procurement unit;

(c) the exception or change would impair a warranty, insurance, indemnification provision, or other protection that the procurement official determines to be necessary to protect the legislative procurement unit;

(d) the solicitation specifically prohibits the requested exception or change; or

(e) the requested exception or change is not in the best interest of the legislative procurement unit.

Section H-110. Procurement without engaging in a standard procurement process.

(1) As provided in Utah Code Section 63G-6a-802(1)(c), a legislative procurement unit may award a contract for a procurement item without engaging in a standard procurement process if:

(a)(i)(A) the legislative procurement unit currently purchases a procurement item from a vendor under an existing contract with that vendor; and

(B) the procurement item is a continuation or an upgrade of a service regarding which the vendor has specific or unique knowledge or experience, or the vendor has customized the procurement item for the particular needs of the legislative procurement unit; or

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(ii) the procurement is under other circumstances that the procurement official determines in writing make using a standard procurement process impractical and not in the best interest of the legislative procurement unit;

(b) the legislative procurement unit is able to negotiate for the purchase of the procurement item on terms that are favorable to the legislative procurement unit; and

(c) in the procurement official's judgment, engaging in a standard procurement process for an award of a contract for the procurement item would not likely result in a contract with materially better terms for the legislative procurement unit.

(2) A legislative procurement unit may, without engaging in a standard procurement process, obtain a procurement item under:

(a) a state cooperative contract; or

(b) any other contract that the Division of Purchasing and General Services makes available to public entities for the purchase of procurement items.

Section H-111. Retention of written determinations.

With respect to any written determination required or allowed under this policy, the procurement official shall retain the written determination in the legislative procurement unit's file relating to the contract.

Section H-112. Limit on notice publication requirement.

A legislative procurement unit is not required to publish notice of:

(1) a procurement under Section H-110, H-501, or H-502; or

(2) a sole source procurement.

Section H-113. Mixed procurement items.

(1) For purposes of applying the provisions of this policy, a procurement official may determine whether a mixed procurement item is to be treated as a standard procurement item or as a professional service procurement item.

(2) A procurement official shall make a determination under Subsection (1) based on:

(a) the nature of the procurement item; and

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(b) whether it is in the legislative procurement unit's best interest to treat the procurement item as a standard procurement item or as a professional service procurement item.

(3) A procurement official's determination under Subsection (1) is conclusive and final.

Part 2. Bidding Process

Section H-201. Resolving a tie bid.

(1) This section applies in a bidding process if:

(a) a tie bid occurs pursuant to an invitation for bids; and

(b) the legislative procurement unit intends to move forward with awarding a contract to a responsible bidder.

(2) The procurement official of the legislative procurement unit that issued the invitation for bids shall award the contract to the tie bidder who is a Utah resident, if:

(a) there is only one tie bidder that is a Utah resident; and

(b) the tie bidder indicated in the bidder's bid that the bidder is a Utah resident.

(3) If Subsection (2) does not apply, the procurement official may:

(a) award the contract to the tie bidder whose bid the procurement official determines will likely have the greatest beneficial economic impact on the state; or

(b) resolve the tie bid by tossing a coin or using any other method of randomly selecting one of the tie bidders.

Part 3. Request for Proposals Process

Section H-301. Application to request for proposals process.

This part applies to a legislative procurement unit's use of the request for proposals process.

Section H-302. Initial review of proposals for compliance with technical requirements.

(1) A procurement official may:

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251 (a) designate an individual or individuals to conduct an initial review of a proposal to
252 determine whether the proposal is timely and responsive and whether the vendor is
253 responsible; and

254 (b) authorize the individual or individuals to reject a proposal if:

255 (i) the proposal is not timely or responsive; or

256 (ii) from an objective standpoint, it is not reasonable to conclude that the vendor is
257 responsible.

258 (2) A failure to reject a proposal under Subsection (1) does not affect the ability of an
259 evaluation committee or legislative procurement unit to reject a proposal on a basis stated in
260 Subsection (1)(b) or any other appropriate basis.

261

262 **Section H-303. Evaluation committee process.**

263 (1) At any time before or after the issuance of a solicitation, a procurement official may
264 appoint an evaluation committee to evaluate proposals submitted in response to a
265 solicitation.

266 (2)(a) Subject to Subsection (2)(b), an evaluation committee may evaluate proposals
267 according to any process the evaluation committee considers to be reasonably calculated to
268 allow a thorough, fair, and unbiased evaluation of the proposals by all committee members,
269 including:

270 (i) a separate evaluation of proposals by individual evaluation committee members,
271 followed by a combined evaluation by all committee members together; or

272 (ii) a group evaluation of proposals by all evaluation committee members together.

273 (b) Any discussion by members of an evaluation committee regarding the committee's
274 evaluation of proposals shall be conducted in a manner that allows each member to hear all
275 of the discussion from all other members.

276 (3)(a) Subject to Subsection (3)(b), an evaluation committee shall evaluate a proposal
277 based on:

278 (i) the proposal;

279 (ii) information provided as part of the evaluation process by the vendor who submitted
280 the proposal;

281 (iii) information the evaluation committee obtains from interviews of references
282 provided by the vendor; and

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283 (iv) any other information generally available to the public at large.

284 (b) Subsection (3)(a) does not prevent an evaluation committee from using a

285 committee member's personal knowledge about or experience with one or more vendors who

286 have submitted proposals if that knowledge or experience does not impair the committee

287 member's ability to exercise independent and impartial judgment in evaluating proposals.

288 (4)(a) An evaluation committee may interview or cause interviews to be conducted

289 with references provided by vendors.

290 (b) The evaluation committee shall ensure that interviews are conducted and

291 information from interviews compiled in as uniform and fair a manner as practicable.

292 (5)(a) An evaluation committee member who does not attend an evaluation committee

293 meeting at which the committee evaluates proposals is removed from the evaluation

294 committee and may not participate in the evaluation of proposals.

295 (b) Attendance at an evaluation committee meeting may be in person or by electronic

296 means.

297 (6) An evaluation committee member who feels that the member's independence or

298 impartiality has been compromised shall recuse himself or herself from the evaluation

299 committee.

300 (7) An evaluation committee member is not disqualified from serving on an evaluation

301 committee because of:

302 (a) the member's previous experience or history with a vendor whose proposal is

303 being evaluated, unless the member or the evaluation committee concludes that the

304 member's previous experience or history with the vendor impairs the member's ability to

305 exercise independent and impartial judgment in evaluating proposals; or

306 (b) a bias that the evaluation committee develops during the evaluation process

307 because of the quality of a vendor's qualifications, the quality of a proposal, information

308 obtained during the evaluation process, or how well a proposal meets criteria in the

309 solicitation.

310 (8) A procurement official may remove an evaluation committee member from an

311 evaluation committee at any time.

312 (9)(a) In conducting an evaluation of proposals, an evaluation committee shall arrive at

313 a consensus score for each proposal.

314 (b) An evaluation committee may calculate a consensus score by:

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315 (i) combining the total of all points given to a proposal by individual committee
316 members;

317 (ii) calculating an average of all the scores given to a proposal by all committee
318 members; or

319 (iii) using any other method the evaluation committee determines to be a fair and
320 accurate way to arrive at a score that reflects the consensus scoring for each proposal.

321 (c) An evaluation committee shall use the same method of calculating a consensus
322 score for each of the proposals being evaluated.

323 (10) An evaluation committee member may change the member's initial scoring during
324 evaluation committee discussions relating to the evaluation of proposals based on the
325 evaluation committee member's further evaluation of proposals in light of the evaluation
326 committee discussion and any other information that becomes available during and as part of
327 the evaluation process.

328 (11) An evaluation committee shall reject a proposal if the evaluation committee
329 determines that:

330 (a) the proposal is not responsive; or

331 (b) the proposal is submitted by a person who is not responsible.

332

Part 4. Approved Vendor List Process

334

335 **Section H-401. Method of selecting vendors from an approved vendor list.**

336 A legislative procurement unit that uses the approved vendor list process to select a
337 vendor for an award of a contract shall select a vendor from the approved vendor list by a
338 random selection method or any other method that ensures that all vendors on the approved
339 vendor list have a fair and equitable opportunity to be awarded contracts.

340

Part 5. Small Purchases

342

343 **Section H-501. Small purchase using any method.**

344 A legislative procurement unit may make a procurement by following any method the
345 procurement official considers to be adequate and reasonable if the procurement:

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346 (1)(a) is of one or more standard procurement items, no one of which costs more than
347 \$7,500; and

348 (b) does not cause the procurement unit to exceed a threshold under Section H-503;
349 or

350 (2) is of a professional service procurement item costing no more than \$50,000 per
351 year.

352

353 **Section H-502. Small purchase using competitive quotes.**

354 (1) A legislative procurement unit may make a procurement by following the method
355 described in Subsection (2) if the procurement:

356 (a)(i) is of one or more standard procurement items, no one of which costs more than
357 \$50,000; and

358 (ii) does not cause the procurement unit to exceed a threshold under Section H-503;
359 or

360 (b) is of a professional service procurement item costing no more than \$100,000 per
361 year.

362 (2)(a) For a procurement described in Subsection (1), a legislative procurement unit
363 shall:

364 (i) obtain at least two competitive quotes from vendors of the procurement item or
365 items; and

366 (ii) subject to Subsection (2)(b), accept the lowest acceptable quote and purchase the
367 procurement item or items from the responsible vendor giving the lowest acceptable quote.

368 (b) Subsection (2)(a)(ii) does not prohibit a legislative procurement unit from:

369 (i) accepting a quote other than the lowest quote and purchasing the procurement item
370 or items from the responsible vendor giving a quote other than the lowest quote if the
371 procurement official determines that factors other than cost are important to consider in
372 making the selection that is most advantageous to the legislative procurement unit;

373 (ii) rejecting all quotes and abandoning the procurement; or

374 (iii) repeating the process under Subsection (2)(a) with quotes from different vendors.

375

376 **Section H-503. Small purchase thresholds.**

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377 With respect to a legislative procurement unit's procurement of standard procurement
378 items under this part:

- 379 (1) the single procurement aggregate threshold is:
380 (a) \$50,000 for a procurement under Section H-501; and
381 (b) \$150,000 for a procurement under Section H-502; and
382 (2) the annual cumulative threshold is \$200,000.

383

384 **Section H-504. Exceeding a limit or threshold.**

385 (1) Notwithstanding any other provision of this part, a legislative procurement unit may
386 exceed a limit under Subsection H-501(1)(a) or H-502(1)(a)(i), the single procurement
387 aggregate threshold, or the annual cumulative threshold if the procurement official:

388 (a) concludes that exceeding the limit or threshold is in the best interest of the
389 legislative procurement unit; and

390 (b) provides a written authorization to exceed the limit or threshold.

391 (2) A written authorization under Subsection (1) shall state the reasons for exceeding
392 the limit or threshold, including an explanation of why exceeding the limit or threshold is in
393 the best interest of the legislative procurement unit.

394

395 **Part 6. Sole Source Procurement**

396

397 **Section H-601. Contesting a sole source procurement.**

398 (1) This section applies to a sole source procurement for which a legislative
399 procurement unit has elected to publish notice as provided in Section 63G-6a-112.

400 (2) As provided in Subsection (3), a person who claims to be another viable source for
401 a procurement item over \$50,000 that a legislative procurement unit proposes to purchase
402 through a sole source procurement process may contest the sole source procurement on the
403 basis that the vendor with which the legislative procurement unit proposes to enter into a
404 contract for the purchase of the procurement item is not the sole source for the procurement
405 item.

406 (3) A person submitting a contest under Subsection (2) shall submit the contest in
407 writing:

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408 (a) within 15 calendar days after the first day of the publication of notice under Section
409 63G-6a-112; and

410 (b) to the procurement official of the legislative procurement unit.

411 (4) A contest under this section shall:

412 (a) contain the name, business address, business telephone number, and email
413 address of the person submitting the contest;

414 (b) contain a detailed explanation of the basis for the contest; and

415 (c) be accompanied by any documentation on which the person relies to show that the
416 person is another viable source for the procurement item.

417 (5)(a) Within 20 calendar days after receiving a timely contest under this section, the
418 procurement official shall make a determination in writing on the contest and send a copy of
419 the determination to the person who submitted the contest.

420 (b) A legislative procurement unit may not continue a sole source procurement
421 process that is the subject of a timely contest under this section unless the procurement
422 official determines that the contest is without merit.

423 (6) A person who fails to contest a sole source procurement as provided in this section
424 is barred from challenging the sole source procurement.

425

426 **Part 7. Contracts**

427

428 **Section H-701. Contract award subject to successful negotiation of contract**
429 **terms.**

430 (1) A legislative procurement unit's award of a contract pursuant to a solicitation is
431 subject to the successful negotiation of contract terms that are:

432 (a) consistent with:

433 (i) the solicitation; and

434 (ii) the legislative procurement unit's standard terms and conditions, except to the
435 extent an exception is approved under Section H-109; and

436 (b) acceptable to the legislative procurement unit as being in the best interest of the
437 legislative procurement unit.

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438 (2) If a legislative procurement unit and the vendor that is awarded a contract pursuant
439 to a solicitation are unable to agree to contract terms within a reasonable period of time, as
440 determined by the procurement official, the legislative procurement unit may:

441 (a)(i) vacate the award of a contract to that vendor; and

442 (ii) award the contract to the responsible vendor with the next-highest scoring
443 solicitation response;

444 (b)(i) reissue the solicitation and repeat the procurement process; or

445 (ii) issue a new solicitation and begin a new procurement process; or

446 (c) cancel or postpone the procurement.

447

448 **Section H-702. Technology Modifications.**

449 A contract may be modified to accommodate new technology if:

450 (1) the solicitation that resulted in the contract contains a provision indicating that the
451 contract would be subject to modification to accommodate new technology;

452 (2) the contract contains a provision indicating the contract is subject to modification to
453 accommodate new technology; and

454 (3) the modification is substantially within the scope of the original solicitation and
455 contract.